

EXHIBIT

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CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE)
NAGELSKI,)
)
Plaintiffs,)
)
vs.)
)
PREFERRED PAIN MANAGEMENT & SPINE)
CARE, P.A., DR. DAVID SPIVEY,)
individually, and SHERRY SPIVEY,)
individually,)
)
Defendants.)
)

D E P O S I T I O N

OF

WENDY YONTZ

At Winston-Salem, North Carolina

Tuesday, August 28, 2018

REPORTER: ELAINE F. HAYES
Notary Public

REED & ASSOCIATES
2401 Whirlaway Court
Matthews, NC 28105
980-339-3575

1 website.

2 Q. What all does that entail?

3 A. I do not know.

4 Q. And what's that belief based on, if she does that?

5 A. From conversations with Jennifer and Laura.

6 Q. How often is Jennifer in the office?

7 A. She's not.

8 Q. Is she on the payroll?

9 A. Yes.

10 MR. HERRMANN: Let's go ahead and take a short
11 break.

12 (Recess from 10:20 a.m. to 10:35 a.m.)

13 By Mr. Herrmann:

14 Q. Before the break, I asked you kind of about your
15 relation to Mrs. Spivey, and you said that your
16 stepdad, Daryl Huffman, is her brother; is that
17 right?

18 A. Yes.

19 Q. Did he adopt you?

20 A. Yes.

21 Q. We're going to kind of go into your move from Belk to
22 PPM. Just generally, and we'll get into more
23 specifics, why did you leave Belk to go to PPM?

24 A. I was looking for something different. Retail and
25 the holidays are awful.

1 Q. And did you reach out to PPM or did PPM reach out to
2 you?

3 A. I had talked to Sherry -- we've discussed it quite a
4 few times, that they were thinking of hiring or they
5 needed HR in-house there at the location at all
6 times. I didn't really pursue it. We talked about
7 it for about a year.

8 Q. You and Sherry?

9 A. Yeah. And change is kind of scary, so --

10 Q. All right. When did you start at PPM?

11 A. November 2015.

12 Q. And just so I've got the time period right, you think
13 from around November 2014 to November 2015 you were
14 having off and on conversations with Sherry Spivey
15 about coming to do the in-house HR at PPM?

16 A. Yes.

17 Q. About how often would you have those conversations?

18 A. They only occurred about three times during that time
19 period.

20 Q. And do you recall who suggested that you come there
21 first? I mean, I take it you didn't know about their
22 HR needs, so I'm asking, did Sherry contact you first
23 about coming and doing HR at PPM?

24 A. No. I had went to her house, and she asked just in
25 conversation what I was doing. You know, I said I

1 was still doing HR, and she had mentioned again that
2 they do need somebody in-house.

3 Q. When did this conversation happen where you went to
4 her house?

5 A. It was warm weather.

6 Q. Maybe summer of 2015?

7 A. May have been the spring.

8 Q. And then you said you probably had about three
9 conversations with Sherry about that. Would I be
10 right that the first one was in roughly
11 November of 2014 like we talked about?

12 A. Yes.

13 Q. What do you remember about the first conversation?

14 A. It was basically me complaining of the holidays in a
15 retail store and Sherry discussing their need for
16 someone on location, and I had mentioned, you know,
17 that change was scary and I was trying to stay where
18 I was at.

19 Q. I understand how, in a retail store, they're busier
20 around the holidays. How does that impact the HR
21 department?

22 A. With Belk, there is no one job. You assist in all
23 areas, so I would open and close the store. Some
24 days I was the only one there with a key, so I had to
25 manage the floor as well.

1 Q. Yeah.

2 A. Just myself.

3 Q. And earlier you talked about the prior HR person
4 there.

5 A. Yes.

6 Q. Was that person leaving?

7 A. Yes.

8 Q. And that person trained you before he or she left?

9 A. Yes.

10 Q. About how long after you started did that former HR
11 person leave?

12 A. In total, we had about two months of training.
13 During this period, she had went out to have a baby.

14 Q. We talked about the videos and kind of the one-on-one
15 with her. What other training did you get during
16 that two months?

17 A. Just the one-on-one with her and the videos.

18 Q. Okay. Back to PPM. I know you talked about a
19 conversation in November of 2014 with Sherry Spivey
20 and then one that you place around the spring of
21 2015, because the weather was warmer, at her house.
22 Do you recall any other conversations with Sherry
23 Spivey about you joining PPM?

24 A. I called Sherry and asked her if they were still
25 looking for somebody because I couldn't do another

1 holiday in retail.

2 Q. When do you think you called her and asked her about
3 that?

4 A. September of 2015.

5 Q. Okay. Between spring of 2015 and September of 2015,
6 basically between that conversation that you
7 described at her house and when you called her, had
8 you had other discussions with her about joining PPM?

9 A. I'm sorry. Would you repeat those dates again?

10 Q. Sure. From your conversation with Mrs. Spivey at her
11 house in roughly the spring of 2015 until this
12 September call where you called her and asked about a
13 position at PPM, were there any conversations in the
14 middle with her about joining PPM?

15 A. I'm sure there was.

16 Q. Just kind of off and on talked about it?

17 A. In passing. You know, "We're still looking for
18 someone."

19 And I would not be willing to make a change
20 for a while, so I'd say, "No, thank you."

21 Q. But she would just every now and then ask you, and
22 you would say, "No, thank you"?

23 A. Just when we would see each other and we would talk
24 about work.

25 Q. How often do you see each other?

- 1 September of 2015, and correct me if I'm wrong, but
2 with the holiday coming up, for the first time, you
3 were kind of ready to make that kind of scary change.
4 Is that right?
- 5 A. Correct.
- 6 Q. What happened next?
- 7 A. Sherry told me that she would talk to Dr. Spivey and
8 Suzanne and she would get back with me. And she
9 asked me to send my resume.
- 10 Q. And did you do that?
- 11 A. Yes.
- 12 Q. Do you think that was also in September of 2015?
- 13 A. I don't recall.
- 14 Q. Sometime between September and when you started?
- 15 A. Yes.
- 16 Q. That's close enough. What was the next thing that
17 happened?
- 18 A. Sherry called me and offered me the position.
- 19 Q. How long before you started do you think you got the
20 call from Sherry where she offered you the position?
- 21 A. How long before I started --
- 22 Q. I'm sorry. Did you receive that offer call like two
23 weeks before, a week before? Did you start right
24 away? That's all I'm asking.
- 25 A. Maybe a month.

- 1 Q. Did you sit down for an interview with anyone before
2 you started at PPM?
- 3 A. No.
- 4 Q. Aside from submitting your resume and talking with
5 Sherry Spivey, did you do anything else to obtain
6 that job at PPM, again looking at the time that she
7 said, "We're offering you the position"? Any other
8 steps you took?
- 9 A. I sent a letter of recommendation along with my
10 resume.
- 11 Q. Who was that letter from?
- 12 A. Kristin Bullard.
- 13 Q. And she was at Belk?
- 14 A. Human resources at Belk.
- 15 Q. All right. Anything else?
- 16 A. No.
- 17 Q. What time did you give Belk notice that you were
18 leaving?
- 19 A. Two-week notice.
- 20 Q. Did you work out those two weeks?
- 21 A. Yes.
- 22 Q. How long after the offer was made to you did it take
23 you to accept it? In other words, did you accept the
24 offer right away or did you need to contemplate it
25 for a while?

1 A. I called back that day and accepted it.

2 Q. At that time when she made the offer, did you know
3 what your rate of pay was going to be? Did she put
4 that in the offer?

5 A. Yes.

6 Q. And what was your starting rate of pay at PPM?

7 A. I believe it was \$17 an hour.

8 Q. You said you started in November of 2015; is that
9 correct?

10 A. Correct.

11 Q. Before your first day at work, was there anything
12 that you did to get ready? In other words, was there
13 training or anything like that?

14 A. No.

15 Q. What happened on your first day? What was the day
16 like?

17 A. Mary Benton was there. She showed me to a little
18 office. She set up access to the computer and an
19 e-mail, and I was shown a little bit about the
20 computer, like the public drive, and we discussed
21 areas that needed to be addressed.

22 Q. And what were the areas that needed to be addressed?

23 A. Ensuring that the handbook was up-to-date, set in
24 place any training, organize the personnel files.

25 Q. Did you start organizing the personnel files on your

1 thought I asked?

2 A. Yes, that's what I thought you asked.

3 Q. Okay. So that's good. Just to clear that up, before
4 you actually started at PPM, you didn't know about a
5 reorganization at PPM, correct?

6 A. Correct.

7 Q. After you started, did you come to learn about a
8 reorganization?

9 A. Yes.

10 Q. And what did you learn?

11 A. I believe I brought a lot of this up, observing
12 different positions and learning what people did and
13 the need or lack of need for certain positions.

14 Q. You said that you brought a lot of that up?

15 A. Yes.

16 Q. All right. And who would you bring that up with?

17 A. To Mary Benton.

18 Q. Anyone else?

19 A. No.

20 Q. Did you start bringing up that sort of stuff from the
21 beginning after you started there?

22 A. Yes. Reorganization was a topic from the moment I
23 started.

24 Q. And I guess that's -- the first time that you learned
25 that it was a topic, who did you learn that from,

1 that PPM was undergoing a reorganization?

2 A. This was more of conversations between myself and
3 Mary, that we were -- she was trying to set up a
4 budget, and I was observing and learning what
5 employees' job duties were.

6 Q. And prior to starting at PPM, you had no experience
7 in a reorganization, correct?

8 A. Other than cutting time, correct.

9 Q. Right. Cutting individual employee's hours; is that
10 what you're referencing?

11 A. Correct.

12 Q. And that happened at Belk?

13 A. Yes.

14 Q. Did you get any training from anyone at PPM on kind
15 of how to do a reorganization?

16 A. No.

17 Q. Did Mrs. Spivey ever talk to you about PPM's
18 reorganization?

19 A. No.

20 Q. Did Dr. Spivey ever discuss it with you?

21 A. Myself and Mary would approach him about areas we
22 felt needed attention.

23 Q. Was your understanding that as the owner of PPM he
24 was the one who wanted the reorganization and y'all
25 were helping carry that out? Is that fair?

1 A. Yes.

2 Q. Did you learn that part of your role was going to be
3 helping select folks for reorganization on your first
4 day at PPM?

5 A. On my first day, no.

6 Q. How long after you started do you think you learned
7 that would be part of your role?

8 A. Within the first month.

9 Q. And how did you learn that?

10 A. Like I said before, it was issues that I saw that
11 needed to be addressed.

12 Q. I guess all I'm asking is, what's the first time you
13 remember anyone at PPM -- and I want to include Mary
14 Benton; I'm not going to fight on whether she's an
15 employee or not, but include her because she's
16 definitely part of the reorg -- the first time you
17 heard someone use the word reorganization?

18 A. Within the first month of being there.

19 Q. Who used that word, reorganization?

20 A. Dr. Spivey.

21 Q. And what did he say?

22 A. Once I brought up the areas that we needed to work
23 on, and Mary was in on the conversation as well,
24 Dr. Spivey did realize that we needed to reorganize.

25 Q. Now, Mrs. Spivey testified that the reorganization

1 started in 2014, and I believe Dr. Spivey testified
2 it started in early 2015. Was it your understanding
3 it was a new reorganization that you were starting or
4 that you were kind of brought into an ongoing
5 reorganization?

6 A. That was never clarified for me.

7 Q. You don't know?

8 A. I don't know.

9 Q. What was the first position that you can recall
10 analyzing and then recommending that it not be
11 necessary and could be eliminated?

12 MS. SMITH: And this is Wendy's
13 recommendation?

14 MR. HERRMANN: This is Wendy personally, not
15 the company.

16 A. I would say the individuals that made the reminder
17 calls.

18 Q. Who were those individuals?

19 A. 

20 Q. And were you primarily responsible for suggesting
21 that their roles be eliminated?

22 A. I consulted with Mary.

23 Q. Did you bring it to Mary's attention or did she bring
24 it to your attention?

25 A. I brought it to Mary's attention.

1 A. Correct.

2 Q. And did you have any role in their separation from
3 employment?

4 A. Role as in being present?

5 Q. Or as in having some sort of input or sitting in on
6 discussions as to whether to separate their
7 employment.

8 A. For the ones you just mentioned?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. There was some earlier testimony, I believe,

12 [REDACTED]
13 Do you remember that?

14 A. Yes.

15 Q. And I believe you said that some of the first
16 positions that you had identified as possible

17 [REDACTED]
18 [REDACTED]

19 A. Correct.

20 Q. When did you first, if you recall, recommend
21 elimination of their positions?

22 A. Within a month or two of starting with PPM.

23 Q. So you would have recommended elimination of their
24 positions pretty early on, it sounds like?

25 A. Yes.

1 Q. So you saw the letter to Ms. Nagelski separating her
2 employment before it went out?

3 A. Yes.

4 Q. Do you recall any other discussions with either Mary
5 Benton or Dr. Spivey prior to separation of Sue
6 Nagelski?

7 A. No.

8 Q. Let's take a minute and talk about Ms. Kovalich. Did
9 you have any discussions with Mary Benton or
10 Dr. Spivey prior to Ms. Kovalich being separated from
11 PPM?

12 A. No.

13 Q. Were you aware that that was going to happen before
14 it happened?

15 A. Just right before it happened.

16 Q. Do you recall any discussions as to whether
17 Ms. Kovalich's position was necessary?

18 A. Conversations with Dr. Spivey?

19 Q. Or Mary Benton or anyone else.

20 A. Yes. He did mention that was the reason for
21 termination, was that the position was not needed.

22 Q. And when did you learn that?

23 A. Right before it occurred.

24 MS. SMITH: Okay. Let's take just a quick
25 break.